1285.

SUPREME COURT OF THE UNITED STATES.

No. 99.

CHARLES H. F. MORING, PLAINTIFF IN ERROR,

vs.

GARRET W. RYCKMAN.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

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[GIDEON, Print.]

UNITED STATES OF AMERICA, *ss.*

[L. S.] The President of the United States of America, to the justices of the supreme court of the State of New York, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in an action which is in the said supreme court of the State of New York, before you, on a remittitur from the court of appeals of the said State of New York, between Charles H. F. Moring, appellant, and Garret W. Ryckman, respondent, a manifest error hath happened to the great damage of the said Charles H. F. Moring, as by his complaint appears; and it being fit that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington on the first Monday of August next, in the said Supreme Court of the United States, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court of the United States may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this 15th day of April, in the year of our Lord 1852.

JOHN W. NELSON, *Clerk*,
N. DANE ELLINGWOOD, *Attorney*.

The answer of the justices of the supreme court of the State of New York, for the city and county of New York.

The record and proceedings whereof mention is within made, with all things touching the same, are hereby respectfully certified to the honorable the Supreme Court of the United States, within mentioned, in a certain schedule to this writ annexed, as within it is commanded.

[L. S.] Witness the honorable Henry P. Edwards, presiding justice of the supreme court, at the city of New York, this sixth day of May, A. D. 1852.

GEORGE W. RIBLET, *Clerk*.

STATE OF NEW YORK, *ss.*

Pleas in the court of appeals, held at the court-house in the village of Elmira, on the eleventh day of July, in the year of our Lord

[L. S.] one thousand eight hundred and fifty-one, before the judges of said court—

Witness, Charles H. Ruggles, esq., chief judge; Charles S. Benton, clerk.

CHARLES H. F. MORING, appellant,
against
GARRET W. RYCKMAN, respondent.

Be it remembered, that, on the fourteenth day of March, in the year of our Lord one thousand eight hundred and fifty, the appellant in this cause came here into the court of appeals, by N. Dale Ellingwood, his attorney and counsel, and filed in the said court his notice of appeal and return thereto from a judgment of the supreme court. And the respondent in said cause afterwards appeared in said court of appeals, by C. F. Wetmore, his attorney, and B. F. Butler, his counsel; which said notice of appeal and the return thereto, filed as aforesaid, are hereunto annexed.

Whereupon the said court of appeals, after having heard this cause argued by Mr. N. Dane Ellingwood, counsel for the appellant, and by Mr. B. F. Butler, counsel for the respondent, and after due deliberation having been had thereon, did order and adjudge, that the judgment of the supreme court, appealed from in this cause, be in all things affirmed.

And it was further ordered and adjudged, that the respondent recover against the appellant his costs of appeal, and also interest on the amount of the judgment of the supreme court, by way of damages for the delay and vexation caused by the bringing of the appeal in this cause.

It was also ordered, that the record and proceedings be remitted to the supreme court, there to be proceeded upon according to law.

Therefore, it is considered that the said judgment be in all things affirmed, with costs as aforesaid, and stand in full force, strength, and effect. And hereupon, as well the notice of appeal and return thereto aforesaid, as the judgment of the court of appeals aforesaid, by them given in the premises, are by the said court of appeals remitted into the supreme court of the State of New York, before the justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law; and which record now remains in the said supreme court, before the justices thereof, &c.

CH. S. BENTON, *Clerk*.

Court of appeals, clerk's office,
Albany, July 23, 1851.

I hereby certify, that the preceding record contains a correct transcript of the proceedings in said cause in the court of appeals, with the papers originally filed therein attached.

CH. S. BENTON, *Clerk*.

SUPREME COURT.

CHARLES H. F. MORING, plaintiff in error,
against
GARRET W. RYCKMAN, defendant in error.

We consent that the within record, bill of exceptions, to be filed, is

the record, bill of exceptions, &c., as certified to the judges of the supreme court.

Dated 1st of March, 1850.

N. DANE ELLINGWOOD,
Attorney for plaintiff.
C. F. WETMORE,
Att'y for deft. in error.

The clerk will file the within, pursuant to the above consent.
2d March, 1850. WM. MITCHELL.
Filed March 2, 1850.

SUPREME COURT.

Pleas before the justices of the supreme court of judicature of the people of the State of New York, at the Capitol, in the city of Albany, of the term of January, in the year of our Lord one thousand eight hundred and forty-six—

Witness, Greene C. Bronson, esq., chief justice; Hallett and others, clerks.

The People of the State of New York, to the justices of the superior court of the city of New York, greeting:

Because, in the record and proceedings, and also in the giving of judgment in a certain cause which was in our said court before you, between H. F. Moring, plaintiff, and Garret W. Ryckman, defendant, in a plea of replevin, as is said, manifest error hath intervened, to the great damage of the said Charles H. F. Moring, as he complains; and we being willing that the error, if any, should be corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, that if judgment be thereupon given, then, without delay, you distinctly and openly send, under your seal, the record and proceedings aforesaid, with all things touching or any wise concerning the same, to our justices of the supreme court of judicature, at the Capitol, in the city of Albany, on the first Monday of January next, together with this writ, that the record and proceedings aforesaid being inspected by our said justices, we may cause to be done thereupon, for correcting that error, what of right ought to be done.

Witness Greene C. Bronson, esq., chief justice, at the court-house in the city of Rochester, the third Monday of October, one thousand eight hundred and forty-five.

HALLET and others, *Clerks.*

I allow this writ of error; and a proper bond having been executed to justify the same, I do order a stay of proceedings on the execution issued upon the judgment in the superior court, if one shall have been issued, and, if none shall have been issued, then the stay of the issuing of one, until judgment shall have been rendered on this writ of error.

Dated July 3, 1846.

W. P. HALLET.

The answer of the justices of the superior court of the city of New York, on the within writ mentioned.

The record and proceedings, whereof mention is within made, with all things touching the same, are hereby respectfully certified to the justices of the supreme court of judicature within mentioned, in a certain schedule to this writ annexed, as within it is commanded.

Witness Samuel Jones, esq., chief justice of our said court, at the City Hall of the said city, this 30th day of January, 1846.

SUPERIOR COURT.

Pleas in the superior court of the city of New York, held at the City Hall of the city of New York, before the justices of the same court, on the first Monday of August, of August term, in the year one thousand eight hundred and forty-three—

Witness Samuel Jones, esq., chief justice; J. Oakley, clerk.

CITY AND COUNTY OF NEW YORK, *ss.*

Garret W. Ryckman, defendant in this suit, was summoned to answer Charles H. F. Moring of a plea, wherefore he took certain goods and merchandise, the property of the said plaintiff, described in the writ of replevin in this cause, and herein after set forth; and thereupon the said plaintiff, by N. Dane Ellingwood, his attorney, complains that the said defendant, to wit, on the tenth day of July, one thousand eight hundred and forty-three, at the city and county of New York aforesaid, and within the jurisdiction of this court, took certain goods and merchandise, to wit, fifty bags of hops, marked G, and marked from one [1] to fifty [50] as follows, to wit :

Number 1, containing 235 pounds.
Number 2, containing 190 pounds.
Number 3, containing 187 pounds.
Number 4, containing 193 pounds.
Number 5, containing 214 pounds.
Number 6, containing 220 pounds.
Number 7, containing 207 pounds.
Number 8, containing 181 pounds.
Number 9, containing 230 pounds.
Number 10, containing 173 pounds.
Number 11, containing 166 pounds.
Number 12, containing 145 pounds.
Number 13, containing 144 pounds.
Number 14, containing 214 pounds.
Number 15, containing 175 pounds.
Number 16, containing 179 pounds.
Number 17, containing 173 pounds.
Number 18, containing 215 pounds.
Number 19, containing 210 pounds.
Number 20, containing 162 pounds.
Number 21, containing 172 pounds.
Number 22, containing 195 pounds.
Number 23, containing 149 pounds.
Number 24, containing 212 pounds.
Number 25, containing 176 pounds.
Number 26, containing 222 pounds.
Number 27, containing 169 pounds.
Number 28, containing 205 pounds.
Number 29, containing 191 pounds.
Number 30, containing 213 pounds.
Number 31, containing 202 pounds.
Number 32, containing 202 pounds.
Number 33, containing 289 pounds.
Number 34, containing 209 pounds.
Number 35, containing 184 pounds.
Number 36, containing 148 pounds.
Number 37, containing 209 pounds.
Number 38, containing 151 pounds.
Number 39, containing 173 pounds.
Number 40, containing 186 pounds.
Number 41, containing 162 pounds.
Number 42, containing 231 pounds.
Number 43, containing 249 pounds.
Number 44, containing 179 pounds.
Number 45, containing 231 pounds.
Number 46, containing 190 pounds.
Number 47, containing 187 pounds.
Number 48, containing 188 pounds.
Number 49, containing 207 pounds.
Number 50, containing 204 pounds.

The property of him, the said plaintiff, of great value, to wit, of the

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value of one thousand and fifty-three dollars, and unjustly detained the same until, &c.; wherefore the said plaintiff saith that he is injured, and hath sustained damage to the amount of one thousand dollars, and therefore he brings suit, &c.

And now at this day, that is to say, on the first Monday of September, in the term of September, in the said year one thousand eight hundred and forty-three, until which day the said defendant had leave to the declaration aforesaid to imparle, and then to answer thereunto before the said justice of the superior court of the city of New York aforesaid, at the City Hall of the city of New York, come as well the said plaintiff, by his attorney aforesaid, as the said defendant, by Stephen Sammons, his attorney; and the said defendant, by his said attorney, defends the wrong and injury when, &c., and says, that he did not take the said goods and merchandise in the said declaration mentioned, or any or either of them, or any part thereof, in manner and form as the said plaintiff hath above thereof complained against him, and of this he, said defendant, puts himself upon the country, and the said plaintiff doth the like, &c. To which said plea the said defendent appended a notice, in the words and figures following, to wit:

SIR: Please take notice, that the said defendant, on the trial of the above cause, will insist upon, and give in evidence under the general issues above pleaded, that he, the said defendant, is an inspector of hops for the city and county of New York, duly commissioned and appointed; and further, that he was such inspector of hops at the time he is charged in said plaintiff's declaration with having taken and unjustly detained certain goods and merchandise, to wit, fifty bales of hops; that said hops were shipped or shipping without having submitted to the inspection of, or without having been inspected by, this defendant, agreeably to part 1st, chap. xvii, title 2, article 10, of the revised statutes, and that said hops were shipped or shipping for the purpose of being exported from the State of New York, contrary to the form of the statute in such case made and provided; that the said defendant, as such inspector, &c., seized said hops within the limits of the said city and county of New York, as forfeited in accordance with the directions of the statute in such case made and provided. And further, that he detained the same also by virtue of the statute in such case made and provided.

Yours, &c.,

S. SAMMONS,
Attorney for defendant.

NEW YORK, *September* 19, 1843.
To N. DANE ELLINGWOOD, esq., *Attorney*.

Therefore, the issue above joined is ordered by the said superior court to be tried at a term of the said court, appointed to be held at the City Hall of the city of New York, in and for the city and county of New York aforesaid, on the first Monday of October next. And hereupon the process thereof is continued between the parties aforesaid in this same court, before the justices thereof, until the first Monday of

November, in the term of November, in the year one thousand eight hundred and forty-four, at the City Hall of the city of New York, and the same day is given to the parties aforesaid at the same place.

At which said last mentioned day, before the justices aforesaid, at the place last aforesaid, came the parties aforesaid, by their respective attorneys aforesaid, and hereupon the issue above joined is ordered by the said superior court to be tried at a term of the said court, to be held at the City Hall of the city of New York, for the said city of New York, on the first Monday of December next.

At which said last mentioned day, at the City Hall of the city of New York, before the justices aforesaid, came, as well the within named plaintiff as the within named defendant, by their respective attorneys aforesaid, and the jurors of the jury summoned to try the said issue being called also come, who to speak the truth of the matters within contained, being chosen, tried, and sworn, say upon their oath, that the said defendant did not take the said goods and merchandise within mentioned, in manner and form as the said plaintiff hath within complained against him.

Therefore it is considered, that the said plaintiff take nothing by his said suit, but that he and his pledges to prosecute be in mercy, &c., and that he, the said defendant, go thereof without day, &c., and the said plaintiff now here electing to waive a return of the said goods and merchandise, prays a writ of the people of the State of New York, directed to the sheriff of the city and county of New York, that by the oaths of twelve good and lawful men of his county, he diligently inquire, as well the value of the aforesaid goods and merchandise as the damages which the said defendant hath sustained by reason of the detention thereof, as also for the costs and charges by him about his suit in that behalf expended; and that the inquisitions he shall thereupon take, he return to the justices of the said court, at the City Hall of the city of New York, on the twenty-fourth day of December, one thousand eight hundred and forty-five, together with the writ to be to him thereof directed, and it is granted, &c. At which said last mentioned day and place, before the said justices, comes the said defendant by his attorney aforesaid, and the said sheriff aforesaid now here returns the said writ with an inquisition thereto annexed, by which it appears that the value of the aforesaid goods and merchandise is assessed at nine hundred and fifty-nine dollars and seventy cents, and the damages aforesaid at one hundred and sixty-four dollars and ninety-four cents, besides six cents costs.

Therefore it is considered, that the said defendant recover against the said plaintiff the said value and damages above assessed to eleven hundred and twenty-four dollars and sixty-four cents, and also ninety-four dollars and thirty-three cents for his costs and charges by the court now here adjudged of increase to the said defendant, and with his assent, according to the form of the statute in such case made and provided; which said value, damages, costs, and charges, in the whole,

amount to twelve hundred and eighteen dollars and ninety-seven cents, and that the said defendant have execution thereof.

Filed December 24, 1845, 18 minutes p. m.

Judgment signed the 24th day of December, A. D. 1845.

A. VANDERPOEL.

NEW YORK SUPERIOR COURT.

CHARLES H. F. MORING
vs.
GARRET W. RYCKMAN.

Aftewards, at the day and place within contained, before the honorable Thomas J. Oakley, one of the justices of the superior court of the city of Ney York, at the City Hall of the said city, the aforesaid issue joined between the parties aforesaid came on to be tried by a jury of the county aforesaid, for that purpose duly empannelled, good and lawful men of the said county. At which day came there as well the said defendant as the said plaintiff, by their respective attorneys; and jurors of the jury aforesaid empannelled to try the said issue, being called, also come, and were [there] and then in due manner chosen and sworn to try the said issue, and upon the trial of the said issue the counsel of the said plaintiff, to maintain and prove the said issue on his part, called

Henry Edward Moring, who, being duly sworn said, that the fifty bags of hops replevined by the plaintiff in this cause arrived in the port of New York on the third day of July, in the year 1843, and on the same day they were landed and carried from the East to the North river to be re-shipped on board of the Sir Isaac Newton, then lying in the port of New York, bound for Hamburgh.

The hops were laid on the said wharf alongside of the said vessel, Sir Isaac Newton, and a part of them were on the same day shipped on board of the said Sir Isaac Newton, and a balance of the said hops were put on board the said vessel on the fifth of July; they had remained on the wharf in the mean time, and the hops were brought from Boston, in the State of Massachusetts, and arrived in the port of New York in the schooner Walcott; the bags containing the hops were marked with marks purporting to be with marks of the inspector of hops at Boston. The hops so arriving by the schooner Walcott were intended to be shipped to Hamburgh; when they left Boston they were shippet from Boston for Hamburgh, by the way of New York; at the time that the plaintiff received the hops he received instructions to ship them to Hamburgh, and they were so shipped by him on board of the said Sir Isaac Newton. The defendant took the hops out of the Sir Isaac Newton after they were shipped and carried them away in carts. On being cross examined by the counsel for the defendant, the witness said, that he had never seen the Boston inspector mark bags of hops, and that he was not in Boston at the time the hops in question were shipped; the plaintiff received orders from his friends in Boston, the

owners of the hops, to ship direct from Hamburgh. Coster & Co., of Boston, were the owners of the hops.

The defendant's counsel here moved for a non-suit, on the ground that this suit not having been brought by and in the name of the owners of the hops, the action could not be sustained by the present plaintiff. His honor, the presiding judge, reserved a decision upon the motion till after the further examination of the witness, who, being further questioned by the court, testified that the said hops were sent to his brother, the plaintiff, who had written orders from the owners in Boston to tranship them. On further direct examination by the plaintiff's counsel, the witness stated, my brother was the consignee of the hops; he was to pay the freight for them, and was to engage a vessel to have them re-shipped; does not recollect if the freight was paid by his brother or himself; there was a bill of lading. A bill of lading was here produced by the plaintiff's counsel, which being shown to the witness he identified the same as the bill of lading accompanying the hops; the said bill of lading is in the words and figures following, to wit: "Shipped in good order and well conditioned, by Gossler & Co., on board the schooner called the Walcott, whereof Ryder is master, now lying in the port of Boston, and bound for New York, to say, fifty bales of hops, being marked and numbered as in the margin, and are to be delivered, in the like good order and well conditioned, at the aforesaid port of New York, the *damages* of the sea only excepted, unto Mr. C. H. F. Moring, or to assigns, he or they paying freight for the said hops, eighteen cents each bale, without primage and average accustomed.

"In witness whereof the master or owners of the said vessel hath affirmed to three bills of lading, all of this tenor or date, one of which being accomplished, the others to stand void. Dated in Boston, the 28th day of June, 1843.

"E. WHITON, Jr., *Agent*."

The counsel for the defendant now renewed his motion for a non-suit, on the ground that the plaintiff had not such an interest in the hops as would entitle him to sustain this action. His honor, the judge, overruled the motion; to which decision the counsel for the defendant excepted.

The witness, in further direct examination, testified that the hops were estimated to be worth ten cents a pound; there were nine thousand five hundred and ninety-seven pounds, making their estimated value $959 70.

It was admitted by the respective counsel that the plaintiff have paid sundry bills for labor, cartage, storage, &c., arising from the taking of the hops by the defendant, amounting to the sum of twenty-two dollars and sixty-seven cents. It was also admitted on the said trial that the said defendant is, and, at the time of the taking of the said hops, was the inspector of hops for the city and county of New York, duly appointed and constituted, and that as such inspector he

seized and took the said hops on the ground that the same had not been inspected in the city of New York, and were about being exported from the State of New York without having been submitted to the examination of an inspector within this State, and contrary to the provisions of the statute in this State, in relation to the inspection of hops; and it was also admitted that the acts of the said defendant, in the premises, as such inspector, were all legal and proper, provided the said hops were, by the statute of this State, liable to seizure by the defendant as such inspector.

The counsel for the plaintiff and defendant, respectively, had rested the case, and his honor, the judge, then and there presiding, among other matters, charged the said jury that the said hops were, by the statute of the *statute of the* State of New York, under the circumstances of the present case, liable to seizure by the defendant, as such inspector; to which charge the counsel for the plaintiff excepted.

The jury rendered a verdict for the defendant.

And afterwards, to wit, in the term of November, in the year of our Lord one thousand eight hundred and forty-five, the exception so taken to the charge of the judge, at the trial of the cause, came on to be heard before the justices of the said superior court of the city of New York aforesaid, and the counsel of the respective parties being heard thereupon, and due deliberation being thereupon had, the said exceptions were overruled by the court, and the motion thereupon made by the counsel for the plaintiff for a new trial was denied.

To which decision and opinions of the said court the counsel for the plaintiff excepted.

And because the said exceptions, as herein before mentioned, do not appear upon the record of the said trial, therefore, on the prayer of the said plaintiff, by his counsel, the judges of the said court have, to this bill of exceptions, put their seals, according to the statute in each case made and provided this 22d day of December, in the year 1845.

S. JONES, [L. S.]
THOS. J. OAKLEY, [L. S.]
A. VANDERPOEL. [L. S.]

Filed January 31, 1846.

SUPERIOR COURT,
Clerk's office, of the city of New York.

I, Jesse Oakley, of the superior court of the city of New York, do hereby certify, that the foregoing bill of exceptions was signed and sealed by the honorable Samuel Jones, chief justice of the superior court of the city of New York, and Thomas J. Oakley and Aaron Vanderpoel, esquires, associate justices of said court.

In witness whereof I have hereunto subscribed my name and affixed my seal of the said court, at the City Hall of the city of New York, this 30th day of January, A. D. 1846. J. OAKLEY, *Clerk*.

Afterwards, to wit, on the first Monday of January, in this same term, before the justices of the supreme court aforesaid, comes the said

plaintiff, by N. D. Ellingwood, his attorney, and says, that in the record and proceedings aforesaid, and also in giving the judgment aforesaid, there is manifest error in this, to wit, that by the record aforesaid it appears that the judgment aforesaid in form aforesaid given, was given for the said defendant against the said plaintiff, whereas, by the law of the land, the said judgment ought to have been given to the said plaintiff against the said defendant; and the said plaintiff prays that the judgment aforesaid, for the errors aforesaid, and other errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing, and that he may be restored to all things which he hath lost by occasion of the said judgment.

And hereupon afterwards, to wit, on the said first Monday of January, as yet of January term, in the year of our Lord one thousand eight hundred and forty-six, the said Garret W. Ryckman, by Lathrop S. Eddy, his attorney, freely comes here into court and says, that there is no error either in the record and proceedings aforesaid, or in giving the judgment aforesaid, and he prays that the said supreme court of judicature, before the aforesaid justices thereof now here, may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid above assigned for error, and that the judgment aforesaid, in form aforesaid given, may be in all things affirmed, &c.

At a general term of the supreme court, held at the city of New York, on the 27th day of December, 1849; present, Justices Jones, Edmonds, Edwards, and Hurlbut.

GARRET W. RYCKMAN, defendant in error,
ads.
CHARLES H. F. MORING, plaintiff in error.

On motion of Charles F. Wetmore, attorney for the defendant in error, ordered, that the judgment of the superior court of the city of New York, be, and the same is hereby affirmed with costs.

JAMES CONNER, *Clerk*.

I consent that the foregoing order be filed with the clerk of this court, and that a copy thereof be certified to the court of appeals on the appeal made herein.

Dated 6th March, 1850.

C. F. WETMORE,
Attorney for defendants in error.

Filed 2d March, 1850.

SUPREME COURT.

CHARLES H. F. MORING, plaintiff,
against
GARRET W. RYCKMAN, defendant.

To Charles F. Wetmore, esq., plaintiff's attorney, and George W. Riblet, clerk of the city and county of New York.

SIR: Take notice, that the plaintiff appeals to the court of appeals

from the order entered in this cause on the 27th day of December, 1849, affirming the judgment of the superior court of the city of New York.

Dated 12th of February, 1850.

Yours, &c.,

N. DANE ELLINGWOOD,
Attorney for plaintiff.

Filed February 13, 1850.

A copy.

GEO. W. RIBLET, *Clerk.*

Endorsed: Supreme court; Garret W. Ryckman, defendant in error, ads. Charles H. F. Moring, plaintiff in error. Remittitur, &c.

C. F. WETMORE,
Attorney for defendant in error.

Filed 26th July, 1851.

Filed August 6, 1851, at 10 h. 30 m.